



U.S. Army Corps  
of Engineers  
Buffalo District

# Public Notice

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Applicant: Stream +  
Wetlands Foundation

Published: December 17, 2021  
Expires: January 17, 2022

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Application No: LRB- 2008-01578  
Section: OH

All written comments should reference the above Application No. and be addressed to:  
**US Army Corps of Engineers, Buffalo District**  
**Regulatory Branch (Attn:) Susan L. Baker**  
**1776 Niagara Street**  
**Buffalo, NY 14207**

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THIS NOTICE ANNOUNCES A PROSPECTUS THAT HAS BEEN SUBMITTED FOR THE PROPOSED DEVELOPMENT OF A WETLAND AND STREAM UMBRELLA MITIGATION BANKING INSTRUMENT COVERING THE CUYAHOGA RIVER WATERSHED WITH AN INITIAL MITIGATION BANK SITE, REFERRED TO AS THE FISH CREEK SOUTH WETLANDS AND STREAM MITIGATION BANK, PURSUANT TO 33 CFR 332, COMPENSATORY MITIGATION FOR LOSSES OF AQUATIC RESOURCES (FEDERAL REGISTER: APRIL 10, 2008, EFFECTIVE JUNE 9, 2008). DEPARTMENT OF ARMY AUTHORIZATION PURSUANT TO SECTION 404 OF THE CLEAN WATER ACT WOULD BE REQUIRED FOR PROPOSED STREAM AND WETLAND MITIGATION ACTIVITIES THAT WOULD RESULT IN A DICHARGE OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES.

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## GENERAL INFORMATION

**PURPOSE:** The U.S. Army Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; American Indian Tribes; and other interested parties in order to consider and evaluate the proposed Cuyahoga River Watershed Umbrella Mitigation Banking Instrument and Fish Creek South Wetlands and Stream Mitigation Bank.

**COMMENT PERIOD:** Comments submitted within 30 days from the date of this notice will be fully considered during the review of this proposal.

**DISCLAIMER:** All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof, may also be posted on a Corps internet web sites. A lack of response will be interpreted as meaning that there is no objection to the work as proposed. **Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to**

**individual letters of comment.**

**CONTACT:** Comments or questions pertaining to the work described in this notice should reference the Application Number and be directed to the attention of Susan L. Baker, who can be contacted at the above address, by calling (716) 879-4474, or by e-mail at: Susan.L.Baker@usace.army.mil.

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**BACKGROUND**

The Corps has the authority to issue permits under Section 404 of the Clean Water Act for discharges of dredged or fill material into waters of the United States, including jurisdictional wetlands, and for structures or work in navigable waters under Section 10 of the Rivers and Harbors Act of 1899. Permittees may be required to provide “compensatory mitigation” for unavoidable impacts to aquatic resources.

One such option for providing compensatory mitigation is through the purchase of credits from a mitigation bank. “Mitigation bank” means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by DA permits. Mitigation banks are operated by third-party sponsors that assume legal responsibility for providing the required compensatory mitigation of multiple permittees at one or more off-site locations. The operation and use of a mitigation bank are governed by a mitigation banking instrument. An umbrella mitigation banking instrument allows future authorization of additional mitigation bank sites to be incorporated by way of a mitigation banking instrument modification.

As indicated in the Corps regulations (33 CFR 332.8(b)), the district engineer will establish an Interagency Review Team (IRT) to review documentation for the establishment and management of mitigation banks. The IRT facilitates the establishment of mitigation banks through the development and review of mitigation banking instruments. The Ohio IRT consists of the following federal and state resource agencies: Corps - Buffalo, Huntington, and Pittsburgh Districts, U.S. Environmental Protection Agency (USEPA), U.S. Fish and Wildlife Service (USFWS), U.S. Department of Agriculture’s Natural Resources Conservation Service, Ohio Environmental Protection Agency (OEPA), and Ohio Department of Natural Resources.

Approval to use an approved mitigation bank to offset impacts associated with a specific permit is the decision of the Corps. The Corps provides no guarantee that any particular general or individual permit would be granted authorization to use an approved mitigation bank to compensate for unavoidable impacts.

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**PROPOSAL UNDER REVIEW**

**UMBI/BANK SPONSOR:** Stream + Wetlands Foundation, 123 South Broad Street, Suite 238  
P.O. Box 369, Lancaster, OH 43130

**MITIGATION BANK LOCATION:** The approximately 87.7-acre Bank is located west of Majors Lane and north of West Main Street in the City of Kent, Portage County, Ohio (41.158228°, -81.372642°).

**PROPOSAL:** The Bank Sponsor has submitted a prospectus to the Corps, Buffalo District to establish a stream and wetland Umbrella Mitigation Banking Instrument (“UMBI”) for the Cuyahoga River Watershed (USGS 8-digit Hydrologic Unit Code 04110002) with one initial proposed mitigation bank, Fish Creek South Wetlands and Stream Mitigation Bank (“Bank”).

The overall objective of the UMBI and the Bank is to generate compensatory mitigation credits to offset unavoidable adverse impacts to wetlands and streams within the Service Area, as described below. Credits would be generated through the restoration (re-establishment and rehabilitation), establishment, enhancement and/or preservation of wetlands and streams and the restoration and/or preservation of upland buffers within the boundaries of Bank and any future mitigation bank sites added to the UMBI.

**SERVICE AREA:** Service area means the geographic area within which impacts can be mitigated at a specific mitigation bank or an in-lieu fee program, as designated in its instrument.

The Service Area for the UMBI and Bank is proposed as follows:

1. For impacts to jurisdictional waters, the Service Area will encompass the entire Cuyahoga River 8-digit Hydrologic Unit Code (HUC 04110002) watershed in Ohio.
2. For non-jurisdictional stream and wetland impacts (state isolated wetland or ephemeral streams), the Service Area is as follows:
  - a. For impacts to isolated Category 1 wetlands of any size and isolated Category 2 wetlands of 0.5 acre or less, the service area includes the entire Ohio portion of the Buffalo Corps District (ORC §6111.022).
  - b. For impacts to isolated Category 2 wetlands greater than 0.5 acres, isolated Category 3 wetlands of any size, or to ephemeral streams, the service area will encompass the entire Cuyahoga River 8-digit HUC (04110002) watershed in Ohio.
3. Compensatory mitigation of wetland or stream impacts outside the Service Area can be considered by the Corps and/or Ohio EPA, as applicable, on a case-by-case basis consistent with applicable state and federal regulations and laws, including but not limited to 33 CFR §332, ORC §6111, and Ohio Administrative Code (OAC) §3745-1-54.
4. Approved mitigation credits generated by the mitigation site(s) authorized under this instrument can be purchased and used by in-lieu fee program sponsors to fulfill mitigation obligations for impacts located and outside of the Service Area, on a case-by-case basis as approved by the Corps and/or Ohio Environmental Protection Agency (EPA).

**BANK MITIGATION PLAN:** The approximately 87.7-acre Bank historically supported extensive areas of muck farms that were drained and tilled to facilitate agriculture prior to portions of it being abandoned between the 1950’s and 1970’s. The Bank is now an expansive wetland complex dominated by invasive species that is situated in an area of residential suburban development in the City of Kent. Fish Creek flows southwest through the Bank and joins the

Cuyahoga River approximately 1.5 miles southwest of the Bank. The Bank contains 76.9 acres of emergent, scrub-shrub, and forested wetland; and 3,359 linear feet of perennial Fish Creek. The objectives of the Bank are as follows:

- **Re-establish high-quality forested wetlands.** Re-establishment of high-quality wetlands would take place in areas of appropriate topography that are not already existing wetland. To accomplish this goal, hydrology restoration, micro-topography restoration, and installation of native trees, shrubs, and seed mixes would take place. The Bank would be designed, constructed, and planted with the aim of restoring the maximum amount of forested wetlands practicable.
- **Re-establish high-quality forested uplands.** Portions of the Bank's active restoration area that do not convert to wetland would be restored to upland forest. These areas would provide valuable habitat adjacent to re-established and rehabilitated wetlands. The restored upland forests would be planted and seeded with native species at similar densities to the re-established wetlands, however, species would be chosen whose individual hydrology tolerances are suited to drier soil conditions with less frequent saturation or inundation.
- **Rehabilitate existing degraded wetlands.** Rehabilitation of the existing low-quality wetland complex would take place by restoring the suite of functions currently absent from this highly degraded aquatic resource. Vegetation is dominated by invasive plants, and much of the wetland area is dense monocultures of *Phragmites australis* (common reed). Hydrology in these areas has been historically manipulated through the installation of drainage tile and the channelization of Fish Creek. Previous agricultural land leveling practices have displaced the natural surface microtopography, impacting the ability of the wetlands to recover from past land use practices. Invasive vegetation growing in these areas would be controlled through appropriate physical or chemical means, and the installation of native trees, shrubs, and seed mixes would allow for development into a forested wetland community. Hydrology would be restored, and degraded, non-forested wetlands would be improved through microtopography restoration. These activities would restore more natural wetland functions and values, leading to an immediate increase in plant community richness and wildlife habitat quality, as well as improvements in other wetland functions (e.g., ground water exchange, water storage, sediment retention, etc.).
- **Rehabilitate existing degraded upland buffer.** Existing uplands adjacent to the wetland rehabilitation areas are either non-forested or support degraded, successional forests. Some of the existing uplands contain stands of young successional woods, however, the understories of these woods currently contain a mix of common invasive plant species, including *Rosa multiflora* (multi-flora rose), *Lonicera spp.* (bush honeysuckles), *Frangula alnus* (glossy buckthorn), and *Reynoutria japonica* (Japanese knotweed). Invasive plants would be treated using appropriate means and methods. Rehabilitated upland forests would be planted with trees and shrubs and seeded with native species at similar densities to the rehabilitated wetlands, however, species would be chosen whose individual hydrology tolerances are suited to drier soil conditions with less frequent saturation inundation.
- **Enhancement of highly impacted on-site Fish Creek and floodplain.** The section of Fish Creek that flows through the Bank has a riparian area that is dominated by invasive plant species. The Creek has been historically degraded through sedimentation, runoff from adjacent developed areas, erosion, removal of riparian vegetation, and channelization; these factors continue to negatively affect in-stream habitat and channel stability. Due to constraints from adjacent land use, it is not feasible to do in-channel work. However, to

return more natural function to Fish Creek and to limit invasive plant hydrochorous seed and propagule dispersal, the Creek would be enhanced through invasive plant control, streambank plantings (e.g., live stake plantings below the top of bank), and restoration work within the riparian corridor. Riparian areas within 50 linear feet from the top of each bank would be planted with native trees, shrubs, and a seed mix to re-establish a forested plant community. There are three small sections of the Creek that fall under an overhead powerline easement. Those areas would be excluded from credit generation.

Credits are proposed to be generated in accordance with the following tables:

Table 6.1. Anticipated Wetland Credits

Wetland Re-establishment	Ratio	Area (ac)	Credits		
			Non-forested	Forested	Total
Non-Forested wetlands	1:1	0.2	0.2		0.2
Forested wetlands	1:1	0.3		0.3	0.3
Forested wetlands (setback <sup>1</sup> )	1:2	0.1		0.1	0.1
Non-Forested uplands <100' from wetlands	1:4	0.1	0.0		0.0
Forested uplands <100' from wetlands	1:4	4.7		1.2	1.2
<b>Re-establishment Totals</b>		<b>5.4ac</b>	0.2	1.6	<b>1.8</b>
<i>Initial Credit Release</i>		30%	0.1	0.5	0.6
Wetland Rehabilitation	Ratio	Area (ac)	Credits		
			Non-forested	Forested	Total
Rehabilitated wetlands [100% invasives to be non-forested <sup>2</sup> ]	1:1	1.1	1.1		1.1
Rehabilitated wetlands [100% invasives to be non-forested <sup>2</sup> ] (setback <sup>1</sup> )	1:2	0.9	0.5		0.5
Rehabilitated wetlands [100% invasives to be forested <sup>2</sup> ]	1:1	45.5		45.5	45.5
Rehabilitated wetlands [100% invasives to be forested <sup>2</sup> ] (setback <sup>1</sup> )	1:2	4.1		2.1	2.1
Rehabilitated wetlands [to be non-forested]	1:2	1.3	0.7		0.7
Rehabilitated wetlands [to be non-forested] (setback <sup>1</sup> )	1:4	0.1	0.0		0.0
Rehabilitated wetlands [to be forested]	1:2	14.6		7.3	7.3
Rehabilitated wetlands [to be forested] (setback <sup>1</sup> )	1:4	2.6		0.7	0.7
Rehabilitated uplands	1:8	3.7		0.5	0.5
<b>Rehabilitation Totals</b>		<b>73.9ac</b>	2.3	56.1	<b>58.4</b>
<i>Initial Credit Release</i>		30%	0.7	16.8	17.5
		Area	Credits		
			Non-forested	Forested	Total
<b>Wetland Project Total</b>		<b>79.3ac</b>	2.5	57.7	<b>60.2</b>
<i>Initial Credit Release</i>			0.8	17.3	18.1

Table 6.2. Anticipated Stream Credits

Stream Restoration Restoration/Enhancement, Activity Level 4	Flow Regime	Ratio	Length	Credits
Fish Creek	perennial	1:1	3,186 (3,359' - 173' under easement)	3,186
<b>Stream Project Totals</b>			<b>3,186</b>	
<i>Initial Credit Release</i>			30%	956

If approved, the Bank Sponsor would provide long-term protection of the Bank through the recordation of a site protection instrument. A designated third-party manager would be responsible for long-term management after Bank closure; it is anticipated that the City of Kent Parks and Recreation Department would be the long-term manager. Financial assurances would be provided through one or more of the following mechanisms: construction performance bond, maintenance bond, or causality insurance policy.

Location and details of the proposed Bank are shown on the attached documents. The entire prospectus for the UMBI and the Bank may be found on the Buffalo District's website along with this Public Notice: <http://www.lrb.usace.army.mil/Missions/Regulatory/Public-Notices/>

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**WATER QUALITY CERTIFICATION:** A Section 401 Water Quality Certification may be required from the Ohio Environmental Protection Agency in conjunction with the proposed establishment of the HSMB.

**HISTORIC AND CULTURAL RESOURCES:** Based on a review of the Ohio Historic Preservation Office (OHPO) Geocortex Viewer (Viewer), there do not appear to be any known properties listed in, or eligible for listing in, the National Register of Historic Places within the limits of the proposed Bank. The OHPO Viewer indicates that a Phase 1 Survey yielding no archeological findings was previously conducted for the area north and west of the Bank on land not dissimilar to the proposed Bank. Based on the information available, it has been determined that no historic properties would be affected by the proposed Bank establishment and operation. This notice constitutes initiation of consultation with the OHPO per Section 106 of the National Historic Preservation Act. Should any additional information concerning historic properties or cultural resources be submitted to the Corps before the end of the comment period of this notice, the Corps will forward the submitted information to the OHPO for their review.

**THREATENED & ENDANGERED SPECIES:** Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the Corps of Engineers is consulting with the USFWS under separate cover to evaluate any potential impacts associated with Bank to: Indiana bat (E), northern long-eared bat (T), Mitchell's satyr (E), northern monkshood (T), eastern massasauga (T), and to ensure that the proposed activity is not likely to jeopardize their continued existence or result in the destruction or adverse modification of critical habitat.

**REQUEST FOR PUBLIC HEARING:** Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision-making process for this proposal. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the activities requiring approval or a permit, such as property ownership, neighbor disputes, or the behavior or actions of

the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

**EVALUATION:** The decision to approve or deny this proposal will be based on an evaluation of compliance with 33 CFR 332 (Compensatory Mitigation for Losses of Aquatic Resources, Federal Register: April 10, 2008, Effective June 9, 2008), and the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people. Comments are used in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

## **SIGNED**

Steven V. Metivier  
Chief, Regulatory Branch

**NOTICE TO POSTMASTER:** It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.



Stream + Wetlands Foundation: Cuyahoga River UMBI and Fish Creek South Wetlands and Stream Mitigation Bank  
 Department of Army No: LRB- 2008-01578  
 Quad: Kent, OH  
 Portage County, Ohio  
 Sheet 1 of 5















